

PT 95-71  
Tax Type: PROPERTY TAX  
Issue: Charitable Ownership/Use

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS

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HELVETIA SHARPSHOOTERS' )
SOCIETY ) Docket # 93-60-75
        Applicant ) Parcel Index #s
                   ) 01-1-24-04-14-302-015
                   ) 01-1-24-04-18-301-001
                   ) 01-1-24-04-18-301-033
                   ) 01-2-24-04-18-301-007
                   ) 01-2-24-04-18-301-009
                   ) (Madison County)
                   )
THE DEPARTMENT OF REVENUE ) George H. Nafziger
OF THE STATE OF ILLINOIS ) Administrative Law Judge
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RECOMMENDATION FOR DISPOSITION

APPEARANCES: Attorney Donald C. Rikli appeared on behalf of the Helvetia Sharpshooters' Society (hereinafter referred to as the "applicant").

SYNOPSIS: The hearing in this matter was held at 1100 Eastport Plaza Drive, Collinsville, Illinois, on November 30, 1994, to determine whether or not the Madison County parcels here in issue and the buildings thereon, should be exempt from real estate tax for the 1993 assessment year.

Mr. Ray Bargedzi, secretary/treasurer of the applicant, Mr. Alfred Culp, the sergeant at arms of the applicant, and Mr. James Apken, the accountant for the applicant, were present at the hearing, and testified on behalf of the applicant.

The issues in this matter include first, whether the applicant is a charitable organization. Another issue is whether the applicant owned the parcels here in issue and the buildings thereon, during the 1993 assessment year. The final issue is whether the applicant used the parcels here in issue and the buildings thereon, for charitable purposes during the 1993

assessment year.

FINDINGS OF FACT:

1. The position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that the parcels here in issue and the buildings thereon, did not qualify for exemption during the 1993 assessment year, was established by the admission in evidence of Department's Exhibits numbered 1 through 6C.

2. On October 28, 1993, the Madison County Board of Review transmitted an Application for Property Tax Exemption To Board of Review, concerning the parcels here in issue and the buildings thereon, for the 1993 assessment year to the Department (Dept. Ex. No. 2).

3. On May 19, 1994, the Department denied the exemption of the parcels here in issue and the buildings thereon for the 1993 assessment year (Dept. Ex. No. 3).

4. On June 8, 1994, the attorney for the applicant requested a formal hearing in this matter (Dept. Ex. No. 4).

5. The hearing in this matter which was held on November 30, 1994, was held pursuant to that request.

6. The applicant was incorporated pursuant to a Special Charter enacted by the Illinois General Assembly on February 16, 1863 (Dept. Ex. No. 2P). Said Special Charter included, among other provisions, the following:

"...and by this corporate name and style shall be capable of in law contracting and being contracted with, and acquiring by purchase or otherwise and of holding and conveying real and personal estate, either in fee or for a term of years: Provided, that they shall not at any one time name or hold property exceeding in value of ten thousand Dollars."

7. Said Special Charter also included the following provision:

"Said society may select one of its members to act as steward or landlord, furnishing victuals and refreshments on the premises and in the buildings of the society only, at the days and hours appointed by the Executive-Committee thereof, said steward and

landlord to be exempt from license."

8. Pursuant to said Special Charter on April 8, 1869, the Applicant adopted certain "Revidirte Statuten" at a general meeting of the membership (Dept. Ex. No. 2R).

9. An English translation of said "Revidirte Statuten" (Revised Statutes) sets forth the purposes of the applicant as follows:

- "1.) Learning and perfecting free hand shooting;
- 2.) Promoting friendly relations among its members and all friends of the subject of shooting;
- 3.) Developing and vitalizing of the social activity in and about Highland;...."

10. The applicant's current bylaws dated April 7, 1969 (Dept. Ex. No. 2S), set forth the applicant's purposes as follows:

"The purpose of the Helvetia Sharpshooters Society of Highland, Illinois, is to practice shooting and to maintain facilities to provide social, recreational and friendly activities and a Public Park for the benefit of the general public and its members."

11. The parcels here in issue which total approximately 43 acres, were owned by the applicant throughout the 1993 assessment year.

12. I take Administrative Notice of the Department's decision in Docket numbers 89-60-551, -552, -553, and -554, which concerned four of the parcel numbers here in issue.

13. The parcel number, which was not involved in that 1989 case was 01-2-24-04-18-301-009, which was acquired by the applicant on June 12, 1992.

14. The Madison County Fair Association (hereinafter referred to as the "Fair Association"), during 1993, leased portions of the parcels here in issue, pursuant to two different 50-year leases, one dated March 17, 1955, as amended, and the other dated April 27, 1962.

15. On the aforementioned leased property, the Fair Association conducts the Madison County Fair, during one week of each year.

16. The Fair Association has constructed an exhibition hall, six livestock barns, and a grandstand and racetrack on these leased premises.

17. While the leases provide for a lease payment of one dollar per

year, it was established in the 1989 cases that the Fair Association paid \$600.00 or \$800.00 to the applicant for the week of the fair.

18. The testimony was that a similar amount was paid during 1993 (Tr. p. 60).

19. The buildings of the Fair Association during the 1993 assessment year, were under the control of the Fair Association, and were kept locked (Tr. pp. 60 and 61).

20. The Fair Association collected all of the fair income, and paid all of the expenses of the fair.

21. The Fair Association held flea markets and other activities at times other than fair week, in the buildings on these leased areas, during 1993.

22. About six months out of the year, the Southwestern Racing Association sponsored stockcar races at the racetrack and grandstand.

23. The applicant operated a food and beverage stand, which sold sandwiches, beer, and soft drinks at the grandstand during the auto races, during 1993.

24. This food and beverage stand was operated by paid employees. The applicant received the profits of this operation during 1993.

25. The parcels here in issue also contained a swimming pool, which was leased to the City of Highland, pursuant to a 25-year lease for \$1.00 per year during 1993 (Dept. Ex. No. 2J).

26. During 1993, the city operated and maintained the pool. Pursuant to the lease, the city had the right to use the parking areas near the pool for parking for pool patrons, except during fair week.

27. The city also received all admission fees for the use of the pool.

28. The city controlled the access to the pool at all times during 1993 (Tr. p. 61).

29. During 1993, the applicant owned the dance hall, three pavilions,

and a new pavilion with restrooms, located on the parcels here in issue.

30. During 1993, if someone wanted to reserve a pavilion for any reason, there was a \$10.00 charge (Tr. p. 31). No evidence was offered that this charge was ever waived, or reduced, in cases of need.

31. During 1993, the applicant held dances at the dance hall on these parcels every Saturday night.

32. The charge to attend the dances, during 1993, was \$4.00 per person (Tr. p. 54). No evidence was offered that this charge was ever waived, or reduced, in cases of need.

33. The dances began at 8:00 p.m., and lasted until midnight. After 10:00 P.M., the applicant did not collect the admission charge.

34. The dance hall contained an area where food and beverages were sold. Members of the applicant sold food, beer, and soda from this area during the dances. The proceeds of these sales went to the applicant.

35. The applicant rented out the dance hall for anniversary parties, family reunions, wedding receptions, and other occasions.

36. The charge to rent the dance hall for private parties during 1993, was \$300.00 (Tr. p. 55). \$150.00 was collected when the dance hall was reserved, and the remaining \$150.00 was payable on the day of the event. Food and beverage service, including beer, was available at the private parties.

37. One of the applicant's witnesses alleged that the boy scouts and other nonprofit groups were allowed to rent the dance hall at a reduced rate (Tr. p. 28). However, no evidence was offered concerning what other groups were offered a reduced rate, or what the policy was, if any, for reducing rates.

38. During 1993, the local musicians' union put on two free dances at the dance hall. The applicant provided the dance hall, at no cost to that union, for those two dances.

39. During 1993, the applicant sponsored a disabled persons day. On that day all disabled persons had the free use of the dance hall and the pavilions.

40. Also, during 1993, the applicant sponsored a senior citizens day. On that day all senior citizens had the free use of the dance hall and the pavilions.

41. During 1993, the applicant operated a refreshment stand in one of the pavilions near the dance hall on Sunday afternoons and evenings. Beer and soda were sold at this stand during those times (Tr. p. 58).

42. The applicant's attorney offered numerous affidavits and testimony, concerning the availability and the free use of these parcels by the general public during 1993. However, it is apparent from the Madison County aerial tax maps of these parcels, that a substantial portion of these parcels included the Fair Association buildings and grounds, the swimming pool area, and the applicant's dance hall and pavilions, which were not free or generally available to the public (Dept. Ex. Nos. 2AJ and 2AK).

43. The dues to belong to the Applicant were \$15.00 per year, during 1993 (Tr. p. 34).

44. During 1993, the Applicant had 320 members, all of whom were white males, although there were some blacks and Hispanics living in the area (Tr. p. 61).

45. During the fiscal year ended March 31, 1993, the income of the applicant included the following (Dept. Ex. No. 2AH):

Sales-Bar	\$160,035.14
Sales-Kitchen	61,970.49
Total sales	\$222,005.63
Less cost of sales 45.6%	101,176.81
Gross Profit on sales	120,828.82
Admissions	33,466.05
Rent received	6,880.00
Dues	1,250.00
Donations received	150.00

Interest income	7,539.52
	\$170,114.39

46. During the aforesaid fiscal year, the Applicant's expenses were \$164,435.14, leaving a net profit of \$5,679.25

47. During said fiscal year, the applicant made donations of \$4,440.00 to unnamed individuals and/or organizations. Said donations were approximately 3% of the income of the applicant.

48. During 1993, the applicant had a State of Illinois and City of Highland liquor license, a City of Highland dance hall license, and was registered with the Department to collect and pay Illinois Retailers' Occupation tax on its sales (Dept. Ex. 2AL).

49. Based on the foregoing, I find that the applicant was organized for social and recreational purposes, and during 1993, was primarily a social and recreational organization.

50. The applicant leased the areas where the Fair Association buildings were located to the Fair Association, pursuant to a long-term lease during the 1993 assessment year.

51. The Fair Association controlled the use of, and access to, the Fair Association buildings, and collected the income therefrom, during 1993.

52. The applicant leased the area where the swimming pool is located to the City of Highland pursuant to a long-term lease, during 1993.

53. The City of Highland controlled the use of, and access to, the swimming pool and the income therefrom, during 1993.

54. The applicant, during 1993, had no capital, capital stock, or shareholders, and no individual profited from the enterprise.

55. I find that the applicant's funds during the 1993 assessment year, were derived primarily from food and beverage sales, admission fees, rental income, and membership dues, which constituted the applicant's social and recreational business activities, and not primarily from charitable contributions.

56. Since the applicant did not waive, or reduce, dance hall admissions or dance hall rentals, in cases of need, I find that charity was not dispensed to all who needed and applied for it, and that obstacles were placed in the way of those seeking the benefits during 1993.

57. I also find that despite the statements of the applicant's witnesses, in fact, membership in the applicant was limited to dues-paying white males during the 1993 assessment year.

CONCLUSIONS OF LAW: Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

"The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes."

35 ILCS 205/19.7 exempts certain property from taxation in part as follows:

"All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States,...when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit;...."

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. *International College of Surgeons v. Brenza*, 8 Ill.2d 141 (1956); *Milward v. Paschen*, 16 Ill.2d 302 (1959); *Cook County Collector v. National College of Education*, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. *People ex rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363 (1944) and *People ex rel. Lloyd v. University of Illinois*, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of



establishing the right to the exemption is on the one who claims the exemption. *MacMurray College v. Wright*, 38 Ill.2d 272 (1967); *Girl Scouts of DuPage County Council, Inc. v. Department*, 189 Ill.App.3d 858 (2nd Dist. 1989); and *Board of Certified Safety Professionals v. Johnson*, 112 Ill.2d 542 (1986).

It is well settled that the character and purpose for which a corporation is organized must be ascertained from its Articles of Incorporation. *People v. Wyanett Light Co.*, 306 Ill. 377 (1922), and also, *Rotary International v. Paschen*, 14 Ill.2d 480 (1958). It is clear from the applicant's Special Charter and Revised Statutes that it was organized for social and recreational purposes. It is also clear that the applicant is today, I conclude, primarily a social and recreational organization.

The attorney for the applicant at the hearing pointed out that the original deed to the applicant of a portion of these parcels dated April 16, 1863, contained a condition subsequent with a right of entry, stating that if said parcels were not maintained as a park, or the applicant was dissolved or failed to comply with that condition, that the property would pass to the Town of Highland for the same purposes. It should be pointed out that the Rights of Entry or Re-entry Act, 765 ILCS 330/0.01 et seq. limits the effectiveness of such provisions to 40 years, a period long past in 1993.

In the case of *Methodist Old Peoples Home v. Korzen*, 39 Ill.2d 149 (1968), the Illinois Supreme Court set forth six guidelines to be used in determining whether or not an organization is charitable. Those six guidelines read as follows: (1) the benefits derived are for an indefinite number of persons; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and are held in trust for the objects and purposes expressed in the charter; (4) charity is dispensed

to all who need and apply for it; (5) no obstacles are placed in the way of those seeking the benefits; and (6) the primary use of the property is for charitable purposes.

I have previously found that the applicant failed to meet guidelines (3), (4), (5), or (6) of the foregoing six guidelines.

In particular, it should be noted that the applicant's primary sources of income during the 1993 assessment year were its retail sales of food, soda pop, and beer at the dance hall, outside pavilion and grandstand at the races, as well as dance admission and dance hall rentals, all of which were business activities related to the applicant's social and recreational purposes. Those activities were not merely incidental activities to the applicant, but were the applicant's primary activities based on the applicant's March 1993 fiscal year financial statement, and the testimony of the applicant's witnesses. Since the applicant's primary activities were social and recreational, the case of Highland Park Women's Club and Revinia Festival Association v. Department of Revenue, 206 Ill.App.3d 477 (2nd Dist. 1990), and Decatur Sports Foundation v. Department of Revenue, 177 Ill.App.3d 696 (4th Dist. 1988), cited by the applicant in the brief, are distinguishable, since in those cases the food and concession receipts were incidental to the respective plaintiff-appellant's charitable activities.

It should be noted that the Illinois Courts have consistently held that the use of property to produce income, is not an exempt use. People ex rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924). See also The Salvation Army v. Department of Revenue, 170 Ill.App.3d 336 (2nd Dist. 1988), leave to appeal denied. It should also be noted that if property, however owned, is let for a return, it is used for profit, and so far as its liability for taxes is concerned, it is immaterial, whether the owner makes a profit, or sustains a loss. Turnverein "Lincoln" v. Board of

Appeals, 358 Ill. 135 (1934).

The applicant contends that the pool area, as well as the then existing swimming pool which the applicant leased to the City of Highland pursuant to a 25-year lease, qualified for exemption pursuant to the following language found in 35 ILCS 205/19.6:

"...all property owned by any city or village located within the incorporated limits of the city or village...." (Emphasis supplied)

However, that leased area did not qualify for exemption pursuant to said section, since the applicant is not a city, and the foregoing language requires ownership by a city. Where, as here, the owner of the real estate is not exempt from taxation, real estate tax on the total value of the property and improvements is properly assessable to said nonexempt owner, even where a long-term lease is involved. *Marine Bank v. Tax Appeal Board*, 44 Ill.2d 428 (1970). The Court, in that case, stated that proposition at page 430, as follows:

"Where the owner is not exempt, the tax is on the value of the property, not the value of the owner's interest; and it falls upon the owner of title, even where the right to use of the land has been transferred in a 99-year lease."

Consequently, the area leased to the City of Highland did not qualify for exemption pursuant to the above-quoted portion of 35 ILCS 205/19.6, during 1993.

The applicant further contends that the areas leased to the Fair Association pursuant to the two 50-year leases, qualified for exemption pursuant to 35 ILCS 205/19.10, which during 1993, read as follows:

"All property which may be used exclusively by societies for agricultural, horticultural, mechanical or philosophical purposes, and not for pecuniary profit."

In the case of *In re Application of County Treasurer v. Guilford Hope Grange No. 6*, 52 Ill.App.3d 718 (2nd Dist. 1977), at page 721, the Court stated as follows:

"Section 19.10 of the Revenue Act of 1939, is consistent with the

goal of promoting and perpetuating Illinois agriculture by granting tax-exempt status to the properties of agricultural societies so long as the property is not used for pecuniary profit."

Since it has previously been concluded that the applicant, which owns the areas leased to the Fair Association, is primarily a social organization, it is therefore not an agricultural society, and consequently, I conclude that the foregoing section does not apply in this case.

Finally, the applicant, in its brief, relies on 35 ILCS 205/19.16, which exempts certain property from taxation in part as follows:

"Parking areas, not leased or used for profit, when used as a part of a use for which an exemption is provided hereinbefore... and owned by any...charitable institution which meets the qualifications for exemption."

Clearly, since the applicant is primarily a social organization which used the parcels here in issue during the 1993 assessment year, for social and recreational purposes, I conclude that the parking lots on the parcels here in issue did not meet the requirements for exemption, as set forth in paragraph 35 ILCS 205/19.6.

I therefore recommend that Madison County parcels numbered 01-1-24-04-14-302-015, 01-1-24-04-18-301-001, 01-1-24-04-18-301-033, 01-2-24-04-18-301-007, and 01-2-24-04-18-301-009 remain on the tax rolls for the 1993 assessment year, and be assessed to the applicant, the owner thereof.

Respectfully Submitted,

George H. Nafziger  
Administrative Law Judge

August , 1995